



Agenda Date: 10/31/16
Agenda Item: 7A

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor; Suite 314
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CUSTOMER ASSISTANCE

MANKAPO R. DAVIS,)	ORDER ADOPTING THE
Petitioner,)	INITIAL DECISION
)	
v.)	
)	
PUBLIC SERVICE ELECTRIC & GAS COMPANY,)	BPU DOCKET NO. EC15111293U
Respondent.)	OAL DOCKET NO. PUC 02088-16

Parties of Record:

Mankapo R. Davis, Petitioner, pro se
Alexander C. Stern, Esq., Respondent, Public Service Electric & Gas Company

BY THE BOARD:

On November 6, 2015, Mankapo R. Davis ("Petitioner") filed a petition with the Board of Public Utilities ("Board") alleging an inaccurate meter reading, disputing charges of \$1,921.00, and disputing the calculation of those charges billed by Public Service Electric & Gas Company ("Respondent" or "PSE&G") on a non-registering metered electric account for the period beginning October 2014 and ending June 2015 (the "billing period").¹ Respondent filed its answer on December 9, 2015, denying the allegations and stating Petitioner was undercharged as a result of meter tampering.

After receipt of the answer, the Board transmitted this matter to the Office of Administrative Law ("OAL") for hearing and initial disposition as a contested case pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. This matter was assigned to Administrative Law Judge ("ALJ") Patricia Kerins.

An evidentiary hearing was held on July 11, 2016. The parties agreed to \$1,760.68 as the amount in dispute as Respondent had withdrawn its investigative costs. Respondent presented the testimony of Jim Walsh, a Senior Customer Relations Consultant with Respondent, who testified on the meter investigation and furnished exhibits. Petitioner testified on his own behalf with no exhibits.

¹ While the petition referenced another house account, the outstanding balance on the house account was not challenged and therefore is not the subject of this order.

N.J.A.C. 1:1-18.6(c) provides that an agency may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it first determines from a review of the record that the findings are arbitrary, capricious or unreasonable, or are not supported by sufficient, competent, and credible evidence in the record. In assessing the weight of the evidence presented, the ALJ had the opportunity to observe the demeanor of Mr. Walsh as he testified, finding him to be credible in describing the investigation and relevant records in detail. The ALJ also had an opportunity to observe the demeanor of Petitioner as he testified, finding him not to be credible in stating he had received his utility bills but had not noticed he was not being billed. Upon review of the record, the Board **FINDS** the credibility determinations by the ALJ are not arbitrary, capricious or unreasonable and therefore relies upon them.

A customer is responsible for payment of utility services provided during a period in which a meter was tampered. N.J.A.C. 14:3-4.6(d)(1). If the meter registers less than 100 percent of the service provided, the customer is required to repay the undercharged amount when the meter is tampered with, the meter fails to register, or the circumstances are such that the customer should reasonably have known that the bill did not reflect actual usage. N.J.A.C. 14:3-4.6(d). Further, the customer shall not tamper with the meter or equipment under tariff section 7.3. And where a meter has been tampered with, and, such tampering results in an incorrect measurement of the service supplied, the charges for such electric service, based upon the estimate from available data and not registered by a meter, shall be paid by the beneficiary of such service under tariff section 7.4. The beneficiary shall be the customer who benefits from such tampering and if a customer unknowingly received the benefit of meter tampering, only the cost of service not the cost of investigation shall be sought under tariff section 7.4.

The finding that the meter showed signs of tampering and therefore did not register electric usage during the billing period and the finding that estimated billings were properly calculated from consumption history are **AFFIRMED**. The record indisputably reflects the meter was tampered with as a foreign object was placed in the meter preventing it from functioning properly during the billing period. The record additionally reflects the tampering caused an incorrect measurement of the service supplied because the meter did not register usage and a non-registering metered electric account was generated for usage charges for the billing period. The record also reflects that actual consumption for the period November 2013 to June 2014 formed the basis for estimated usage charges for the billing period; therefore, the estimated usage charges were properly calculated consistent with tariff section 7.4.

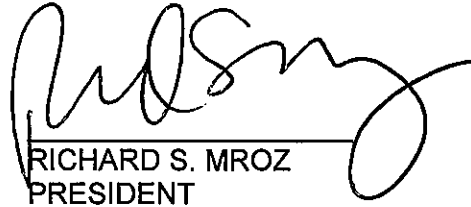
Further, the finding that Petitioner presented no proof that he did not receive electric service during the billing period therefore Petitioner is the beneficiary of such electric service is **AFFIRMED**. The record reflects Petitioner admittedly resided continuously at the address for decades and there was no break in electric service during the billing period, therefore Petitioner received the benefit of electric service during the billing period consistent with tariff section 7.4. Having benefitted from electric service on a tampered meter, Petitioner is responsible for payment of utility services provided during that period in which the meter was tampered with, including repayment of the undercharged amount and cost of service, pursuant to N.J.A.C. 14:3-4.6(d).

Upon careful review and consideration of the record, the Board **FINDS** the ALJ determinations to be reasonable and supported by sufficient, competent, and credible evidence. Accordingly, the Board **ADOPTS** the Initial Decision in its entirety as if fully set forth herein, **DISMISSING** the petition and requiring Petitioner to pay \$1,760.68 to Respondent.

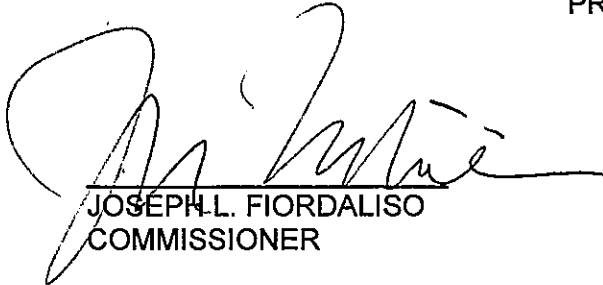
This Order shall be effective on November 10, 2016.

DATED: 10/31/16

BOARD OF PUBLIC UTILITIES
BY:



RICHARD S. MROZ
PRESIDENT



JOSEPH L. FIORDALISO
COMMISSIONER



MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER

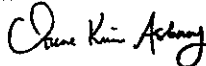


UPENDRA J. CHIVUKULA
COMMISSIONER

ATTEST: 

IRENE KIM ASBURY
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public Utilities



**MANKAPO R. DAVIS, PETITIONER, v. PUBLIC SERVICE ELECTRIC & GAS COMPANY,
RESPONDENT – BILLING DISPUTE**

DOCKET NOS. BPU EC15111293U AND OAL PUC 02088-16

SERVICE LIST

Veronica Beke, DAG
Department of Law & Public Safety
Division of Law
124 Halsey Street
Post Office Box 45029
Newark, NJ 07101-45029
Veronica.Beke@dol.lps.state.nj.us

Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, NJ 08625-0350

Irene Kim Asbury, Esq.
Secretary of the Board
Irene.asbury@bpu.nj.gov

Eric Hartsfield, Director
Division of Customer Assistance
Eric.Hartsfield@bpu.nj.gov

Julie Ford-Williams, Chief
Division of Customer Assistance
Julie.Ford@bpu.nj.gov

William Agee, Esq.
Counsel's Office
William.Agee@bpu.nj.gov

James Kane, Esq.
Counsel's Office
James.Kane@bpu.nj.gov

Mankapo R. Davis
844 Carteret Avenue
Trenton, NJ 08086

Alexander C. Stern
Associate General Regulatory Counsel
PSEG Services Corporation
Law Department
80 Park Plaza, T5G
Newark, NJ 07102-4194
Alexander.Stern@pseg.com



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

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AUG 25 2016

INITIAL DECISION

OAL DKT. NO. PUC 02088-16

AGENCY DKT. NO. EC15111293U

MANKAPO R. DAVIS,

Petitioner,

v.

PUBLIC SERVICE ELECTRIC & GAS

COMPANY, BILLING DISPUTE,

Respondent.

Mankapo R. Davis, petitioner, pro se

Alexander C. Stern, Esq., for respondent

Record Closed: July 11, 2016

Decided: August 25, 2016

BEFORE PATRICIA M. KERINS, ALJ:

Chris
V. Haynes
D. Lee Thomas
E. Hartsfield
J. Ford
C. Jordan
R. Lambert
J. Gertsman
C. Vachier

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner Mankapo R. Davis (Davis) disputes billing by Public Service Electric and Gas Co. (Public Service) for electric service at his residence in Trenton, New Jersey. By letter of October 1, 2015, Davis filed a petition with the Board of Public Utilities (Board). On December 9, 2015, respondent filed an Answer to the petition and

on February 5, 2016, the matter was transmitted to the Office of Administrative Law (OAL) for a hearing as a contested case. A telephone conference was held on March 30, 2016, and the matter was scheduled for hearing on June 9, 2016. After that date was adjourned at the request of respondent, with the consent of petitioner, the matter was heard on July 11, 2016, at the OAL in Mercerville, New Jersey. The record closed on that date.

FACTUAL DISCUSSION

In this matter Davis disputes the amount billed by respondent for electric services at his home at 844 Carteret Avenue, Trenton, New Jersey. On October 1, 2015, he filed a petition with the BPU disputing the amount of \$1,921 billed by Public Service for the October 2014 through June 2015 billing periods. At the hearing the parties agreed that the matter in dispute is \$1,760.68 after Public Service deducted the amount it had assessed for costs of investigation Public Service then presented the testimony of Jim Walsh, a Senior Customer Relations Officer and entered Exhibits 1-4 in evidence. In response, Davis testified on his own behalf and did not submit documentary evidence.

Walsh has worked for Public Service for thirty years in a variety of positions. He stated that its records showed that Public Service staff became aware of a non-registering electric meter at Davis' home. Records showed that the meter had not registered usage for the October 2014 through June 2015 billing periods. The Revenue Integrity Department investigated and staff replaced the meter and examined it. When the meter was examined it was discovered that someone had broken the seal on the meter and placed a foreign object in the meter causing it not to register usage. A photo of the meter (R-1) shows that a stick had been placed in a position in the meter to prevent it from operating properly and registering usage. A separate account was then initiated at Public Service to account for the period when electric usage was not registering on the meter and estimated readings for that time period were billed to that account (R-4) resulting in the disputed amount of \$1,760.68. Walsh testified that pursuant to Section 7.4 of Public Service's Tariff (R-2), prior usage on the account, taking into account relevant weather conditions, was used to prepare the estimated usage and resulting billing.

In response, and in support of his petition, Davis testified on his own behalf. He disputed Walsh's testimony saying that the photo of the replaced meter did not look like a meter. He asserted that Public Service had not proved its case and that the meter should have been replaced or inspected prior to June 2015 if it was not functioning properly. He described the estimated billing as a miscarriage of justice. Under questioning he admitted that he had been residing continuously at the address in question for decades and did not have a break in electric service during the period in question. He admitted receiving his utility bills during the period in question but denied noticing that he was not being billed for the electricity provided to his home. He presented no further evidence either documentary or testimonial.

In reviewing the evidence I found Walsh to be a credible witness. He was direct and articulate and described Public Service's investigation, findings and relevant records in detail. Davis was not credible when he said he was unaware that he was not being billed for the electric services he was receiving. He admittedly was residing in the home and receiving electric services and the bills he reviewed clearly showed he was not being billed for those services.

LEGAL DISCUSSION AND CONCLUSION

BPU regulations provide that a customer is responsible for payment of utility services provided during a period in which a meter was tampered. N.J.A.C. 14:3-4.6(d) (e). That provision is incorporated in Public Service's Tariff for Electric Service at Sections 7.3 and 7.4. The credible evidence presented by respondent at the hearing showed that the meter at Davis' home was not registering electric usage during the billing period in question. It further showed that the meter showed signs of tampering, specifically that a stick had been placed within the meter to prevent it from functioning properly. Davis presented no proof that he did not receive electric service at his home during that period. Nor did he present evidence that the estimated usage billed to him for that period was calculated improperly.

Based on the above, Davis' petition must be **DENIED** and he is liable to Public Service in the amount of \$1,760.68 for the period in question.

ORDER

Petitioner Davis' request for relief is **DENIED** and he is liable to respondent Public Service Electric and Gas in the amount of \$1,760.68 for electric services billed for the period of the non-registering electric meter at 844 Carteret Avenue, Trenton, New Jersey.

I hereby **FILE** my initial decision with the **BOARD OF PUBLIC UTILITIES** for consideration.

This recommended decision may be adopted, modified or rejected by the **BOARD OF PUBLIC UTILITIES**, which by law is authorized to make a final decision in this matter. If the Board of Public Utilities does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **SECRETARY OF THE BOARD OF PUBLIC UTILITIES, 44 South Clinton Avenue, P.O. Box 350, Trenton, NJ 08625-0350**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

August 25, 2016

DATE



PATRICIA M. KERINS, ALJ

Date Received at Agency:

August 25, 2016 (emailed)

Date Mailed to Parties:

PMK/mel

LIST OF WITNESSES

For Petitioner:

Mankapo Davis

For Respondent:

Jim Walsh

LIST OF EXHIBITS

For Petitioner:

None

For Respondent:

- R-1 Picture of Meter
- R-2 Document Showing Meter Reading
- R-3 Tariff for Electric Service
- R-4 Statement of Electric and Gas Consumption for 844 Carteret Avenue,
Trenton, NJ